

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1666-CR

Cir. Ct. No. 2012CF5505

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES EARL GANDY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKEL; Judge. *Affirmed.*

Before Kessler, Brennan and Brash, JJ.

¶1 PER CURIAM. James Earl Gandy appeals a judgment convicting him of possession of cocaine with intent to deliver. Gandy argues that cocaine found in his apartment should have been suppressed because firefighters and

police officers who entered his home while responding to a 911 call violated his Fourth Amendment rights. We affirm.

¶2 Gandy's neighbor called 911 to report that a person was lying outside on the ground in Gandy's front yard in January. Firefighters arrived within minutes and found Gandy in his front yard, conscious but dazed and disoriented. They asked Gandy if they could go inside his home so they could medically assess and treat him. Gandy said that they could. After entering Gandy's home, the firefighters began to work on Gandy as he lay on the couch. The police arrived a few minutes later. They entered through the front door, which the firefighters had left open according to standard procedure. Near the front door, the police saw cocaine, packaged for sale. The police obtained a warrant to search Gandy's home based on their observations. Gandy moved to suppress the evidence seized by the police, arguing that the firefighters and police acted unreasonably under the Fourth Amendment by entering his home. The circuit court denied the motion.

¶3 The Fourth Amendment protects against unreasonable searches and seizures by the government. *State v. Pinkard*, 2010 WI 81, ¶13, 327 Wis. 2d 346, 785 N.W.2d 592. "Subject to a few well-delineated exceptions, warrantless searches are deemed per se unreasonable under the Fourth Amendment." *Id.* (internal quotation marks and citations omitted). "The United States Supreme Court and courts of this state have recognized that a police officer serving as a community caretaker to protect persons and property may be constitutionally permitted to perform warrantless searches and seizures." *Id.*, ¶14.

¶4 A public official acts as a community caretaker "when the [official] discovers a member of the public who is in need of assistance." *State v. Kramer*,

2009 WI 14, ¶32, 315 Wis. 2d 414, 759 N.W.2d 598. Community care-taking functions are “divorced from the detection, investigation, or acquisition of evidence relating to” criminal activity. *Pinkard*, 327 Wis. 2d 346, ¶16. To determine whether the community caretaker exception to the warrant requirement justifies a warrantless search or seizure, the circuit court must consider whether the public official’s action was “bona fide community caretaker activity” and, “if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual.” *Kramer*, 315 Wis. 2d 414, ¶21 (citation omitted).

¶5 Gandy concedes that the firefighters and police were performing a bona fide community caretaker function in responding to the 911 call, but he contends that the firefighters did not act reasonably in moving him into his home so that he could be warm while he was being assessed and treated. He argues that “[t]here were a number of ways to keep [him] warm without moving him into the house near where he was found, such as moving him to a gurney, laying a jacket or blanket over him, or placing him in an ambulance.” Gandy contends that the public interest in keeping homes private from government intrusion outweighs any inconvenience or discomfort associated with treating him where he was found.

¶6 Gandy’s argument is meritless. The firefighters and the police were responding to an apparent medical emergency, one of the core functions of public officials acting in their role as community caretakers. It was cold outside, and Gandy needed medical assessment. The firefighters acted reasonably by taking Gandy into his home while they assisted him. Where, as here, there is an apparent medical emergency, first responders should use their professional judgment about how best to assess and treat the patient without concern for weighing the patient’s privacy interest in their home against the inconvenience or potential danger of assessing the patient in whatever spot the patient may be found. The actions of the

firefighters and police were an appropriate exercise of their community caretaker function and thus reasonable under the Fourth Amendment.

¶7 Gandy next argues that the search was unreasonable because he was unable to consent to entry of his home due to his disoriented condition. At the suppression hearing, Police Officer George Simonson testified that when he arrived, firefighters told him that Gandy gave them permission to take him inside for treatment. Regardless of whether Gandy was able to consent—an issue we need not address—the firefighters acted reasonably in entering Gandy’s home in their role as community caretakers. Therefore, Gandy’s Fourth Amendment rights were not violated.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

